



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2016-0173]

RIN 1625-AA09

Drawbridge Operation Regulation; Hackensack River, Jersey City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily modify the operating schedule that governs the Route 1 & 9 (Lincoln Highway) Bridge across the Hackensack River, mile 2.0, Jersey City, New Jersey. The bridge owner, New Jersey Department of Transportation, submitted a request to restrict bridge openings during the morning and afternoon rush hour periods to alleviate traffic congestion resulting from area roadway closures. It is expected that this change to the regulations would provide relief to vehicular traffic while continuing to meet the reasonable needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before [Insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2016-0173 using Federal eRulemaking Portal at <http://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the

Supplementary Information section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Joe M. Arca, Project Officer, First Coast Guard District, telephone (212) 514-4336, e-mail joe.m.arca@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	Federal Register
NPRM	Notice of proposed rulemaking
SNPRM	Supplemental notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background, Purpose and Legal Basis

The Route 1 & 9 (Lincoln Highway) Bridge at mile 2.0, across the Hackensack River between Kearny and Jersey City, New Jersey, has a vertical clearance of 40 feet at mean high water and 45 feet at mean low water. The waterway users include recreational and commercial vessels.

The owner of the bridge, New Jersey Department of Transportation, submitted a request to the Coast Guard to temporarily change the drawbridge operating regulations.

The purpose of this temporary rule is to help provide relief from vehicular traffic congestion during the morning and afternoon vehicular rush hour periods due to local construction detours. Vehicular traffic on the bridge has increased due to additional traffic detoured from the adjacent Pulaski Skyway Bridge, which is currently under construction to

replace its deck. Construction on the Pulaski Skyway Bridge is expected to continue through September 2017.

The existing regulations require the bridge to open on signal at all times. Under this proposed temporary rule the Route 1 & 9 (Lincoln Highway) Bridge would open on signal, except that the draw need not open for the passage of vessel traffic between 6 a.m. and 10 a.m. and 2 p.m. and 6 p.m., Monday through Friday, except holidays.

Tide dependent deep draft vessels may request bridge openings during the rush hour closure periods provided that at least a twelve hour advance notice is given by calling the number posted at the bridge, which is (973) 589-5143.

III. Discussion of Proposed Rule

The Coast Guard proposes to change the drawbridge operation regulations at 33 CFR 117.723 by adding paragraph (k). This change will facilitate additional vehicular traffic detoured from the Pulaski Skyway Bridge which is expected to be under construction through September 30, 2017.

The Coast Guard believes it is reasonable to allow the Route 1 & 9 (Lincoln Highway) Bridge to remain in the closed position during the morning and afternoon rush hours to accommodate the anticipated 40,000 vehicles, daily, detoured from the Pulaski Skyway Bridge. Given the additional detoured vehicular traffic, if the Route 1 & 9 Bridge opened frequently for vessel traffic during the morning and afternoon rush hours, it would likely result in significant vehicular traffic delays and could negatively impact the ability of emergency vehicles to respond.

Review of the bridge logs in the last three years shows that the bridge openings average 25 per month.

Tide dependent deep draft vessels may request bridge openings between 6 a.m. and 10 a.m. and between 2 p.m. and 6 p.m. provided that at least a twelve hour advance notice is given by calling the number posted at the bridge. The twelve hour advance notice requirement for bridge openings during the rush hour periods gives tide dependent deep draft vessels ample time to plan and optimize their transits through the waterway, and also gives the bridge owner the opportunity to alert commuters of any expected delays caused by pending bridge openings.

Other vessels can still transit the bridge outside the rush hours. It is our opinion that this temporary rule meets the reasonable needs of marine and vehicular traffic.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the ability that tide dependent deep draft vessels can still transit the bridge given advanced notice and vessels that are not tide dependant can still transit outside the closure hours. We believe that the proposal to change the drawbridge operation regulations at 33 CFR 117.723 to allow the bridge owner to keep the Route 1 & 9 (Lincoln Highway) Bridge in the closed position during the morning and afternoon rush hour periods as stated in Section III above, will meet the reasonable needs of navigation.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

The Bridge provides 40 feet of vertical clearance at mean high water that should accommodate all the present vessel traffic except deep draft vessels. The bridge will continue to open on signal for commercial deep draft vessel traffic provided at least a twelve hour advance notice is given. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons state in section IV.A., above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit

a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed temporary rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed temporary rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the Federal Register (70 FR 15086).

Documents mentioned in this notice and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions.

Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security

Delegation No. 0170.1.

2. Through September 30, 2017, in § 117.723, add paragraph (k) to read as follows:

§ 117.723 Hackensack River.

* * * * *

(k) The draw of the Route 1 & 9 (Lincoln Highway) Bridge, mile 2.0, between Kearny and Jersey City, shall open on signal, except that the draw need not open for the passage of vessel traffic between 6 a.m. and 10 a.m. and between 2 p.m. and 6 p.m., Monday through Friday, except holidays.

Tide dependent deep draft vessels may request bridge openings between 6 a.m. and 10 a.m. and between 2 p.m. and 6 p.m. provided that at least a twelve hour advance notice is given by calling the number posted at the bridge.

Dated: May 18, 2016

K. C. Kiefer
Captain, U.S. Coast Guard
Commander, First Coast Guard District
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